FARAD CONSTITUTION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

LETTERS PATENT APPEAL NO.12/2007

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

(Shri Nitin Sambre, Adv. for appellant)

CORAM:- D.D. SINHA &
A.B. CHAUDHARI, JJ.
DATED :- 06.02.2007.

Heard learned Counsel for the appellant.

This Letters Patent Appeal is directed against the order passed by the learned Single Judge, dated 15.12.2006, whereby writ petition preferred by the appellant came to be dismissed. The learned Single Judge in the impugned order has observed thus ;

> "In such circumstances, I find that the question is rightly kept open for adjudication after complete evidence comes on record. If the ESI Authorities have not issued any card to respondent employee, they may deny benefits to him and in that contingency employee will be required to come back for Workmens Commissioner. View taken by the Lower Court is just. No case is made out for interference in writ jurisdiction. Writ petition is thus dismissed. No costs."

Shri Sambre, learned Counsel for the appellant has

submitted that the evidence of the respondent/employee is already over and the evidence of the appellant is yet to commence. It is, therefore, contended that the preliminary issue, whether application of the non-applicant under The Workmen's Compensation Act is tenable is already framed, and therefore, prayed that after the evidence is adduced by the parties, the Workmen's Compensation Commissioner may be directed to give finding on the preliminary issue first and then findings on the other issues.

In the backdrop of the above referred facts and since the parties shall adduce evidence on all issues, we see no reason why the request made by the learned Counsel cannot be granted.

In the circumstances, L.P.A. is disposed of with direction to the Workmen's Compensation Commissioner to record the finding on the preliminary issue first after the evidence of all parties has been adduced before recording findings on the other issues.

JUDGE **JUDGE**

ssw